IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6046 OF 2006

Mohmad Umar Mumtazali & Ors. .. Petitioners.
Vs.
Stanny Jerome Correia .. Respondent.

Mr.V.J.Hegde for the petitioners.
Ms.K.N.Velankar for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 11TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioners and the respondent.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Ms.Velankar, learned counsel waives service for the respondent.

3. By this petition the petitioners have impugned the order dated 2nd May, 2006 by which the interim notice no.219 of 2006 taken out by the petitioners-defendants for amendment of the written statement has been discharged. I perused the schedule of amendment as also the impugned order. The learned Judge while rejecting the amendment has not considered at all as to whether the amendment sought was necessary for the purpose of determining the real questions in controversy between the parties and has rejected the amendment holding that the grounds for

seeking amendment are not proper. He has also observed that if the amendment of the written statement is allowed it would change the nature of the suit. Such observation cannot be sustained. Mr.Hegde, learned counsel for the petitioners fairly stated that he has instructions not to press for deletion of paragraph 9 in the original suit and the defendant may be allowed to only add the paragraph mentioned in the schedule of amendment in addition to original paragraph 9. I perused the amendment sought. It does not change the nature of defence already disclosed in the written statement and no prejudice whatsoever would be caused to the plaintiff if the amendment is allowed. In the circumstances this writ petition is allowed. The petitioners-defendants to carry out amendment within one week from the date of receipt of this order subject to payment of cost of Rs.3,000/- to be paid to the respondent-plaintiff. The paragraph 9 in the written statement is not allowed to be deleted. It is open for the plaintiff to seek re-examination, if he so desires, and if such prayer is made the trial Court shall allow him to lead further evidence.

. With these observations the writ petition is disposed of. Certified copy expedited.

(D.B.Bhosale, J.)